

19. The method of claim 18, wherein, after a predetermined limit of further transmissions related to the first information units, new information not related to the first information units is transmitted.

REMARKS

The new claims recite material disclosed, but not claimed, in the specification, which distinguishes patentably over the references.

Formal drawings were submitted to the PTO in a mailing dated October 26, 1999. These formal drawings do not appear to have been acknowledged. Correction is respectfully requested.

A foreign search report was submitted to the PTO in a mailing dated February 2nd, 2000, along with a document, W0 9724820. This document does not appear to have been made of record. Correction is respectfully requested.

The art rejections are respectfully traversed

Claim 5 recites that the first power level is selected to increase a probability of failed first transmission units transmission and consequent second information units transmission and to minimize average power consumption taking into account the first power level and the second power level.

The Examiner admits in the rejection of claim 5 that this feature is not taught by the references, but he attempts to justify an obviousness rejection.

He states "it is well-known in telecommunications field that all transmitter [sic] have minimum and maximum power levels which they can transmit and the lowest transmitted power level corresponds to a maximum allowable probability of fails." This statement alone is improper under the case of *In re Lee*, 277 F. 3d. 1338 (Fed. Cir. 2002), which prohibits such

conclusory statements and requires the Examiner to find teachings or suggestions in the references.

Applicant respectfully submits that the Examiner then goes on to contradict himself. He says at the top of Page 3 (lines 1-4) that Hulbert does NOT mention that the first power level is selected to increase of probability of failed first information unit transmission and consequent second information unit transmission. Then, at lines 13-16, he contradicts this statement and says that this feature *is* disclosed by Hulbert, but gives no cite for this second statement, since Hulbert does not have such teachings.

Applicant further respectfully submits that the Examiner also makes an improper leap of logic. He says that because Agrawal teaches minimizing power used in transmitting, it would be obvious to choose the first and second power levels to minimize average power consumption. This does not follow. A number of additional calculation steps are necessary in order to choose first and second power levels with minimized average power consumption. Such steps are neither taught nor suggested in the references.

Accordingly, the references neither teach nor suggest independent claim 5.

The other independent claims are analogous in their relevant limitations.

The dependent claims recite additional patentable distinctions over the references.

For instance, claim 8 recites that the content of the second information units is the same as the content of first information units. Claims 2 and 9 are similar.

Against the recitation of claim 8, the Examiner cites Hulbert at column 3, lines 47-77 and column 4, lines 57-63; however, these sections teach that in response to the errors the transmitting end inverts its transmission. This does not appear to teach or suggest that the content of the second information is the same as that of the first information, just that future



transmissions are inverted. Accordingly claims 2, 8, & 9 do not appear to be taught or suggested by the references.

The other rejections would appear to be moot in view of the foregoing. Nevertheless, Applicant reserves the right to assert further arguments with respect to those rejections at a later date.

Applicant respectfully submits that he has answered each issue raised by the Examiner and that the application is accordingly in condition for allowance. Allowance is therefore respectfully requested.

<u>CERTIFICATE OF MAILING</u>	
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On <u>10/31/02</u>	(date)
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Respectfully submitted,

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